



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

SCOTT & WHITE HEALTH PLAN
SUITE 850
C/O BURCK LAPIDUS JACKSON & CHASE PC
5177 RICHMOND AVENUE
HOUSTON TX 77056

Respondent Name

BITUMINOUS CASUALTY CORP

Carrier's Austin Representative

Box Number 19

MFDR Tracking Number

M4-12-1511-01

MFDR Date Received

January 9, 2012

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "The Labor Code is clear. If, as here, the w.c. carrier denies the claim based on compensability, and the same is reversed, fee schedule does not obtain and the health insurer is entitled to recovery of the 'amount paid.' Attachment C. The rationale behind this portion of the Labor Code should be equally clear: the health insurer must pay a clean claim within 20 days of receipt under the prompt pay regulations which inform the regulation of health insurers, including Scott and White Health Plan. It would be unfair, and contrary to health insurance regulation, for another system of insurance (workers' compensation) to deprive the health carrier of its right to full reimbursement when the payment was made pursuant to health insurance regulations and under the agreed upon contract rate between the health insurer's insured and the provider. Administrative determination of compensability will not be possible until well after the health insurer must pay under the prompt pay laws regulating health insurance in the State of Texas... Section 408.027(d) was adopted to ensure that a health carrier is not penalized by complying with health insurance regulations during the pendency of an ill-advised controversy. As a public matter, there would be no incentive for a workers' compensation carrier to act in good faith concerning its controversy if fee schedule were to apply to the ordered reimbursement... SWHP requests the administrative agency order medical fee reimbursement of \$142,202.32 to SWHP c/o of its attorney of record, and for all such other relief afforded under the Labor Code under Tex. Lab. Cd. 409.009 and Rule 140.6."

Requestor's Supplemental Position Summary: "Please let this comprise Scott and White Health Plan's (subclaimant) Objection to partial payment under Tex. Lab. Cd. 408.027(d) and the carrier's PLN-1... I have also attached a copy of the partial payment and confirm that subclaimant seeks the balance of \$133,375.37 going forward."

Amount in Dispute: Originally \$142,202.32, amended to \$133,375.37

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "The carrier does not concede that the subclaimant has shown entitlement under applicable statutes and regulations. Further, the carrier contests whether the disputed charges are consistent with applicable fee guidelines. The carrier will supplement with audit information once received."

Respondent's Supplemental Position Summary: "Carrier has previously responded to this dispute. Please see attached letter and draft EOBs. Carrier maintains its position as outlined in the original response."

Response Submitted by: Flahive, Ogden & Latson

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amended Amount In Dispute	Amount Due
April 17, 2006 through February 15, 2010	Prescription medications, facility services and professional services	\$133,375.37	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. The provisions of Texas Labor Code §§409.009, and 409.0091 apply to dispute resolution.
2. Texas Labor Code §409.0091 applies only to dates of injury on or after September 1, 2007 **except** as provided by Texas Labor Code §409.0091(s).
3. The services in dispute relate to an injury that occurred on April 17, 2006.
4. Texas Labor Code §409.0091(s) applies for the date of injury April 17, 2006.
5. Texas Labor Code §409.0091(s) states that if information was provided to a health care insurer before January 1, 2007 under Texas Labor Code §402.084(c-3), the health care insurer may file for reimbursement from the workers' compensation carrier not later than March 1, 2008; and may file a subclaim with the Division if the request for reimbursement has been presented and denied not later than March 1, 2008.
6. Texas Labor Code §409.0091(f) relates to the form and manner in which the health care insurer shall file for reimbursement from the workers' compensation insurance carrier.
7. 28 Texas Administrative Code §§140.6, 140.8 and 133.307 set out the procedures for health care insurers to pursue medical fee dispute resolution.

Issues

1. Is this request eligible for medical fee dispute resolution under 28 Texas Administrative Code §133.307?
2. Did the requestor appropriately file for reimbursement from the workers' compensation insurance as defined by Texas Labor Code §409.0091?

Findings

1. Review of the submitted documentation in the form of a position statement indicates that the requestor seeks resolution for the disputed services under the authority of Texas Labor Code §409.009 and Texas Administrative Code §140.6. Because the requestor asserts subclaimant status under Texas Labor Code §409.009, the following apply:
 - Texas Labor Code §409.009 (a)(1)(2) states "A person may file a written claim with the division as a subclaimant if the person has: (1) provided compensation, including health care provided by a health care insurer, directly or indirectly, to or for an employee or legal beneficiary; and (2) sought and been refused reimbursement from the insurance carrier."
 - 28 Texas Administrative Code §140.6(d) states in pertinent part, "Subclaimants, other than subclaimants described in §409.0091, must pursue a claim for reimbursement of medical benefits and participate in medical dispute resolution in the same manner as an injured employee or in the same manner as a health care provider, as appropriate, under Chapters 133 and 134 of this title (relating to General Medical Provisions and Benefits--Guidelines for Medical Services, Charges, and Payments); and 2) A health care insurer subclaimant must submit a reimbursement request in the form/format and manner prescribed by the Division and must contain all the required elements listed on the form."
 - 28 Texas Administrative Code §133.307 states, in pertinent part, "(c) (1) Timeliness. A requestor shall timely file the request with the division's MFDR Section or waive the right to MFDR. The division shall deem a request to be filed on the date the MFDR Section receives the request. A decision by the MFDR Section that a request was not timely filed is not a dismissal and may be appealed pursuant to subsection (g) of this section. (A) A request for MFDR that does not involve issues identified in subparagraph (B) of this paragraph shall be filed no later than one year after the date(s) of service in dispute. (B) A request may be filed later than one year after the date(s) of service if: (i) a related compensability, extent of injury, or liability dispute under Labor Code Chapter 410 has been filed, the medical fee dispute shall be filed not later than 60 days after the date the requestor receives the final decision, inclusive

of all appeals, on compensability, extent of injury, or liability...”

Review of the submitted documentation finds that on July 6, 2011, a decision that resolved an issue of compensability, extent of injury, or liability was issued pursuant to Labor Code Chapter 410. For that reason, the requestor was required to file for medical fee dispute not later than 60 days after that final decision. The request for medical fee dispute resolution was received by the MFDR section on January 9, 2012. The Division concludes that the requestor has failed to timely file this dispute. As a result, the requestor has waived its right to medical fee dispute resolution.

2. Furthermore, the Division notes that the services in dispute relate to an injury that occurred on April 17, 2006. A data match under Texas Labor Code §402.084(c-3) was required by Texas Labor Code §409.0091(s) in order for the health care insurer to pursue payment from the Texas workers' compensation insurance carrier. Specifically, Texas Labor Code §409.0091(s) requires that a data match occur before January 1, 2007 in order for the health care insurer (the requestor in this dispute) to pursue reimbursement from the workers' compensation insurance carrier. No documentation was found to support that a data match occurred before January 1st, 2007; therefore, the requestor was not eligible to file for reimbursement from the workers' compensation insurance carrier.

Conclusion

For each of the reasons stated, the Division finds that the requestor has failed to establish that additional reimbursement is due. As a result, the amount ordered is \$0.00.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 additional reimbursement for the disputed services.

Authorized Signature

_____ Signature	_____ Medical Fee Dispute Resolution Officer	_____ December 4, 2013 Date
_____ Signature	_____ Director, Health Care Business Management	_____ December 4, 2013 Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a *certificate of service* demonstrating that the request has been sent to the other party.**

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.